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*THE HON'BLE SRI JUSTICE P.S.NARAYANA

+W.P.Nos.22087 and 8880 of 2006

% 31-10-2007

Dadi Narayana Reddy S/o Durga Reddy
aged about 75 years, Occ: Government retired Employees,
R/o H.No. 6-1/447, Vidyanagar Colony, Nalgonda,
Nalgonda District.

.. Petitioner

And

$ Union India (Government of India) rep. By its Under Secretary to Government of India, Ministry of Home Affairs, Loknayak Bhavan, Khan Market, New Delhi –110 003

2. The pay and Accounts Officer, (Pension & Misc) Ministry of Home Affairs, 2-10 Jamnagar House, New Delhi, 110 011.

.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : M. Venkatram Reddy

^ Counsel for respondents : Mr. Radha Krishna (Central Government Standing Counsel)

?CASES REFERRED :

[1] 2006 (3) ALT 774

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HON'BLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION NOS. 22087 AND 8880 OF 2006

Between:

Shri Dadi Narayana Reddy, D/o. Durga Reddy
aged about 75 years.

…Petitioner

AND

1. Union India (Government of India)
   rep. By its Union Secretary to Government of India,
   Ministry of Home Affairs, Loknayak Bhavan,
   Khan Market, New Delhi – 110 003 and another.

…….Respondents

HON'BLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION NOS. 22087 AND 8880 OF 2006

COMMON ORDER:

1. These two Writ Petitions are filed by the petitioner in relation to the non-granting of Swatantrata Samman Pension and hence both the Writ Petitions are being disposed of by a common order.

2. It is stated that by virtue of an interim order made by this court in WPMP No. 11304 of 2006 in W.P.No. 8880 of 2006, an order was made and being aggrieved by the same, the second Writ Petition No. 22087 of 2006 had been filed and it is needless to say that in a way the first Writ Petition became infructuous since the order had been complied with and being aggrieved of such an order, the second Writ Petition had been filed.

3. Writ Petition No. 8880 of 2006 is filed praying for a Writ of Manamus to direct the firsts respondent to immediately act upon the letter Nos. PAO/P&M/MHA/FF183/457/2165 dated 26.12.2005 and PAO/P&M/MHA/FF-457/2396 dated 27.1.2006 of the second respondent for payment of pension by declaring the action of the first respondent in not acting upon the same as illegal, unreasonable, unjust and illegal.

4. The other facts had been narrated in detail in the affidavit filed in support of the petition. It is suffice to state that while issuing Rule Nisi, in W.P.M.P.No. 11304 of 2006 the respondents were directed to consider the representation of the petitioner dated 19.4.2005 and pass appropriate orders in

accordance with law on or before 5.6.2006.

5. An elaborate counter affidavit had been filed in W.P.No. 8880 of 2006 virtually taking the same stand which had been taken in the other Writ Petition No. 22087 of 2006. In Writ Petition No. 22087 of 2006, Rule Nisi was issued on 26.10.2006 and notice was ordered and a counter affidavit was filed.

6. Writ Petition No. 22087 of 2006 was filed for a Writ of Mandamus to set aside the impugned proceedings NO. 52/CC/35/06-FF(HC) dated 7.8.2006 on the file of first respondent by declaring the same as illegal, arbitrary and violation of principles of natural justice and consequently direct the respondents to forthwith pay the pension in pursuance to the sanction order F.No. 112/614/1997-FF(HC)(B) dated 13.8.2003 on the file of the first respondent.

7. It is stated that the first respondent addressed a letter to the second respondent informing him about the grant of provisional pension of Rs. 3,000/- per month and Dearness Allowance at the rate of 34% from 27.12.2002 onwards to the petitioner. It is stated that in paragraph 5 of the said proceedings or the letter the documents mentioned in the said para had been submitted by the petitioner and the same were sent by the first respondent to the second respondent by making a request to make immediate arrangements for issue of pension payment orders.

8. It is also stated that thereafter, certain correspondence took place between the petitioner and the respondents and ultimately the petitioner had not been paid the pension. The petitioner filed Writ Petition No. 8880/06 and this court was pleased to pass order dated 27.4.2006 directing the respondents to consider his representation dated 19.4.2005. In pursuance of the said directions the impugned order is issued by the 1st respondent.

9. It is also stated that from a perusal of the order dated 13.8.2003 on the file of 1st respondent, it is under stood that the pension was sanctioned on thorough examination of the documents viz., (i) Photograph (ii) Specimen Signature (iii) Impression of Thumb and four fingers of right hand; (iv) Descriptive Roll i.e., identification marks, (iv) Affidavit on Non-Judicial Stamp Paper about his status as a freedom fighter ;indicating date of birth and educational qualification etc., and (vi) Name of the Nationalized Public Sector Bank and Bank Account (with full signature with date), along with the File No. 112/614/97-FF(HC)(B) more specifically (HSSC-Recommendation Slip). Surprisingly, the 1st respondent now passed the impugned order on the ground that the HSSC Recommendation Slip is found to be blank in certain respects.

10. It is stated that the HSSC Recommendation slip is not supposed to be filled up by him and from its very nomenclature it is evident that a recommendation slip is supposed to be filled up by the HSSC. The HSSC has given a file number and the documents submitted by him are contained along with the HSSC recommendation slip. Hence it is submitted that the respondents authorities are supposed to verify the documents submitted by the individuals and then take a decision depending upon the material furnished. In other words, whether there is a substantial compliance is there or not?., is the core question, and not about the filling up the blanks in the recommendation slip. Moreover, from the letter dated 13.08.2003, it is clear that he had complied all the requirements for granting the sanction of pension.

11. It is further stated that the subsequent correspondence made in between the petitioner and respondents after the sanction order dated 13.08.2003, made it clear that the final pension payment order is not issued on the sole ground that

the affidavit on Non-Judicial Stamp paper is not attested by the proper authority. The affidavit is attested by the proper authority and the same was submitted along with my representation dated 19.04.2005 and thereafter there is no proper response from the respondent authorities about one year and after waiting for one year, he filed the Writ Petition. After passing of the interim orders in the Writ Petition, the respondents did not pass the order with in the stipulated period and pursuant to the interim orders passed by this Hon'ble Court, the impugned order is passed only on 7.8.2006. Surprisingly in the impugned order the respondents raised the issues which are in no way concerned to the facts of this case. It is specifically submitted that the ground raised in para 2 of the impugned order related to the subsequent developments after the sanction of pension to him and it is also not related to the case of the petitioner. At any rate, the lapse if any, in submitting the blank recommendation slip cannot be attributable to the petitioner. Firstly it is on account of not providing the proper parapernia to the HSSC for processing the applications, certain blanks in the recommendation slip could have perhaps been occurred while submitting the recommendation slip by the HSSC. At any rate, the petitioner cannot be made liable, even if any blanks are there in the HSSC recommendation slip and that cannot be a ground for keeping in abeyance of the final sanction of pension to the petitioner.

12. It is further averred that the very conduct of the respondents in not issuing any order even after issuance of the sanction of pension order on 13.8.2003 and even after passing of the interim order in Writ Petition No.8880 of 2006 and passing the impugned order after taking much time in W.P.No.8880 of 2006 before the Hon'ble Court amply demonstrate the vindictive attitude of the respondents.

13. It is also averred that it is admitted by the respondents in their counter affidavit in W.P.No.8880/06 that he was asked to send 4 sets of Identification documents and also the further correspondence made vide letters dt.20.8.2004 and 5.10.2004 and therefore in his case even the stage of calling for identification documents and submission of the same is completed even before the alleged revised policy and thus it is not permissible for the respondent authorities to club his case along with other cases. He further submits that from the documents of the Respondents, his case was not considered only on the sole ground that the affidavit is not duly attested by the Executive Magistrate. It is further submitted that the affidavit duly attested by the Executive Magistrate was sent to the respondents along with his representation dated 19.4.2005 under registered post with acknowledgement due. Though the respondents stated in the counter affidavit in W.P.No.8880/06, that they did not receive the representation dt.19.4.2005. As per the impugned order they received the representation dated 19.4.2005 and therefore, the respondent authorities are liable to consider his case for issuing pension payment order without clubbing his case along with other cases.

14. It is further stated that as per the order dated 13.08.2003, the sanction of the pension is liable to be cancelled/modified only if it is found that it was sanctioned on mistaken ground/false information. As per the impugned order it is not the case of the respondent authorities that the pension was sanctioned on mistaken ground/false information and no finding is given either stating that the pension is sanctioned on mistaken ground/false information and on the other hand the sanction of pension is kept in abeyance altogether on the new and different grounds which are not tenable and therefore, the impugned order is liable to be set-a-side.

15. An affidavit filed by the under Secretary in the Ministry of Home Affairs in reply to the averments made in the affidavit filed in support of the Writ Petition narrates the background of the case and also the reply to the contentions in the Writ Petition. It is stated that all persons took part in freedom movement in some way or the other are not eligible for Samman Pension under the "Swatantrata Sainik Samman Pension Scheme, 1980" (the Scheme) (Exhibit R1). Only specified category of freedom fighters, who fulfill the conditions of the Scheme by furnishing the proof of claimed sufferings of the nature and in the manner specified in the Scheme itself are eligible for Samman Pension and that the claims of Samman Pension can be considered by the Central Government only when these are duly verified and recommended by the State Government / U.T. Administrations concerned, provided the report indicates the basis of such recommendations in accordance with the provisions of the Scheme. No action is, therefore, possible on the application sent directly to the Central Government without routing it through the State Government/U.T. Administration concerned. As per the scheme, the verification and recommendation report is mandatory in view of the fact that the documents and other evidence which substantiate the claims, are in the possession of the State Governments/U.T. Administrations and not of the Central Government.

16. It is further stated that the claims of the persons who applied for pension pertaining to border camps suffering in Hyderabad Liberation Movement were not accepted initially, as they did not fulfill the eligibility criteria under the Swatantrata Sainik Samman Pension Scheme. The Central Government constituted a Special Screening Committee in 1983 under the Chairmanship of Shri Govind Bhai Shroff to

scrutinize applications of persons who claimed sufferings in the border camps during the Hyderabad Liberation Movement spanning the present States of Andhra Pradesh, Karnataka and Maharashtra in the earstwhile State of Hyderabad.

17. Subsequently, it was decided in June 1985, with the approval of the Cabinet, to treat the sufferings in Border Camps on par with undergone sufferings as defined in the Scheme.

18. It is also averred that that even after the recognition of the Border Camp sufferings in the Hyderabad Liberation Movement to be on par with underground suffering for the purposes of pension under the S.S.S.Pension Scheme 1980, none of the participants would have qualified for grant of pension as their sufferings could not have been substantiated by the normal evidentiary requirements (primary or secondary) of the S.S.S. Pension Scheme 1980.

Therefore, Special Non-official Screening Committees were formed to identify and recommend the Border Camps and the participants.

That the Hyderabad Special Screening Committee (headed by Shri Govind Bhai Shroff) had made an extensive tour of the regions comprising the erstwhile state of Hyderabad with regard to various camps from which the armed struggle was waged. It met the concerned officers of the concerned States, prominent workers of the Hyderabad Liberation Movement and other people before preparing the list of the 98 camps (including 41 in Andhra Pradesh, 37 in Maharashtra and 20 in Karnataka) along with the names of the camp-in-charges. Shri Shroff remained the Chairman of the Committee upto December 1996. Against an estimated number of about 11000 participants of Hyderabad Liberation Movement, the Committee recommended about 7000 cases during its term, to whom pension was sanctioned. In

December 1996, the Committee was reconstituted under the Chairmanship of Shri N.Giri Prasad, MP (RS). On his death in April 1997, Shri Ch. Rajeswar Rao, MLA, Andhra Pradesh was appointed as Chairman".

19. It is further stated At the instance of Shri C.H.Rajeshwara Rao, Ex-Chairman and other Ex-Members of the Hyderabad Special Screening Committee, another 18 Border Camps were added (in July 2004) to the list of 98 Camps which had been earlier prepared by the Shroff Committee.

20. That the last Committee headed by Shri Rajeswar Rao scrutinized all the old as well as new cases and recommended about 13500 cases for grant of pension during its term from April'97 till May'98. After the work of the Committee was over, it passed a resolution that all eligible cases had been considered. No consolidated, authentic Committee Report (indicating the persons considered, the persons recommended and the persons not recommended) was submitted by the Committee.

21. In view of number of complaints received against the cases recommended by the Committee, it was decided to get their genuineness verified from the State Government. These claims were thereafter processed as per uniform internal guidelines. After receipt of State verification reports, about 3500 cases have already been sanctioned.

22. This state of affairs was continuing till a list of 197 fresh cases, stated to be HSSC-recommended, was received from Shri C.H.Rajeswara Rao, ex-Chairman of the Hyderabad Special Screening Committee. It was found, after scrutiny of the records that the list was highly questionable and not acceptable. Thereafter, a concerted and continuous exercise was undertaken to make systemic improvements in the whole process of examining HSSC-recommended cases. In that process, prospective systemic improvements

and instructions for rule-bound, lawful functioning were issued.

23. It is submitted that Government of Andhra Pradesh, on receipt of large-scale complaints, had ordered the State's Vigilance and Enforcement Department to conduct detailed enquiries into the claims of freedom fighters in four districts. These vigilance enquiries were ordered (in July and November 2005) on complaints like bogus freedom fighters, under-aged persons, bogus date of birth certificates, false certificates in support of claims, etc. It was decided on 2.12.2005 that, pending the final findings in these vigilance enquiries, the final sanction of pension in these four districts [Karimnagar, Khammam, Nalgonda and Warangal] may be kept in abeyance.

24. After discovery of large scale irregularities and illegalities in the matter of grant of pension in C.H.Rajeshwara Rao Committee cases, during an internal investigation, it was decided in January, 2006 that no sanction or approval for calling Identification Documents (IDs) may be given in any case till a bonafide and correct course of action is approved at the competent level. The matter is still under process.

25. It has also come to notice that there were several cases in which contradictory State reports had been received from the State Government. Cases were initially rejected, based on the negative recommendations of the State Government. The same cases were, however, subsequently sanctioned, based on subsequent positive recommendations of the State Government. These fresh reports made no reference to the fact that the same cases had earlier not been recommended for sanction. The Government of Andhra Pradesh has been requested to clarify as to (a) how the cases, which were initially not recommended for sanction, were subsequently recommended for sanction and (b) why

no reference was made to the earlier (negative) State reports in the subsequent (positive) State reports, when the same cases were under reference.

26. Specific stand taken by the State Government is awaited.

27. It is also stated that in a few instances, where pension had been sanctioned on the basis of State Government's verifications reports, subsequent re-verifications have shown that the claimants were not eligible for pension as they were minors at the time of the movement. One person, on whose certification a case had been (earlier) recommended by the State Government, has, then, stated that he has never issued any certificates to the claimant. These instances have cast a serious doubt on the verification of cases at the end of the State Governments.

28. It is stated that as reported by the State Government , after enquiry, the Director General (Vigilance & Enforcement) has submitted his report to the Government of Andhra Pradesh. In that report, it is noticed that several irregularities have taken place in sanction of pension to freedom fighters in the said four Districts. The Director General had made certain recommendations to the Government of Andhra Pradesh, which are as follows:

(i) to constitute special teams for 100% verification;

(ii) to address the Government of India for cancellation of pension in which irregularities have been noticed;

(iii) to initiate action against the concerned officials;

(iv) to explore the possibility of involving services of Mandal Literary Officer/Mandal Education Officer/Head Master of the Village to assist the applicants in processing their proposals for sanction of pension and to avoid brokers; and

(v) to reconsider the issue of taking the entry of age as per 1995 voters ;list as conclusive evidence.

29. In the Vigilance report, initiation of action against certain officials, viz., District Revenue Officer, Revenue Divisional Officer, Mandal Revenue Officer, Mandal Education Officer, etc., has been recommended for their lapses in supervision, negligence in attesting the EPIC 1995 and negligence in attesting the
Voter List of 1995, etc. The State Government has reported that after receipt of the CID report also (on an enquiry referred to the Crime Branch, Criminal Investigation Department (CID), Government of Andhra pradesh, in 2005-2006), a decision will be taken in the matter by them. However, this respondent have already started analysis of the findings in the vigilance report and the cases mentioned therein are being reviewed.

30. In reply to the averments made in support of the Writ Petition, it is stated that the petitioner was asked to send four sets of identification documents vide letter dated 11.3.2003. Subsequently, he was asked to send an affidavit vide letter dated 20.8.2004 and 5.10.2004. However, the required affidavits duly attested by an Executive magistrate were never produced by the petitioner and no representation dated 19.4.2005 from the petitioner has been received in this Ministry. In the meantime, as submitted in para 14 above, several systematic improvements have been made in the processing of verification reports received from the State Government in HSSC-recommended cases. The case of the petitioner was examined on receipt of the interim directions of this Hon'ble Court on the basis of available records, in accordance with various guidelines mentioned in para 19, special guidelines dated 15.12.2005

31. It is also stated that the petitioner had been processed as HSSC-considered and recommended. However, it is to point out that consideration does not ipso facto imply

recommendation. In the absence of a valid recommendation slip of the HSSC, it cannot be presumed that his case was duly recommended by the HSSC. There is no other document on record to fully and duly establish that his case was recommended by the HSSC. Therefore, his case cannot be taken to be an HSSC-recommended case.

32. It is further stated that HSSC-recommendation slip (Annexure R3) on the file of the petitioner is blank and can therefore not be accepted as a valid HSSC-recommendation slip. Only the name and father's name had been mentioned. The name of the border camp and certifier, date of receipt of application, age/date of birth, etc, none of essential, basic particulars are mentioned in the slip. None of the columns (which show due chronological filing-up/processing of the HSSC-recommendation slip) have been filled up and all the columns are blank (including the recommendation columns). The signatures of the Committee members are undated. This blank HSSC-recommendation slip does not show the due process of examination and consideration of the claim, it also does not reflect the due recommendation making process, and nor does it mention the specific recommendation (for or against). Therefore, this type of a blank slip is not a valid recommendation slip and the case therefore cannot be taken to be an HSSC-recommended case.

33. It is also stated that no other evidence to support the claim of underground sufferings, as required under the provisions of the Scheme has been produced and the claim of the petitioner was examined as per the provisions of the scheme and as per rules and law and the Government's policy apropos Hyderabad Liberation Movement Cases. Since the petitioner did not fulfill the eligibility criteria and evidentiary requirements of the Scheme his claim, as per the

revised policy the claim of the petitioner deserves to be rejected.

34. While denying the averments made in paragraphs 6 and 7 it is stated as already submitted above, Hyderabad Special Screening Committee was set up to consider and recommend claims relating to sufferings in border camps for participation in Hyderabad Liberation Movement. Large scale irregularities have been found in internal investigations in the processing of the cases. Large scale irregularities in sanction of pension in HSSC cases, as discovered during enquiry by DG (Enforcement and Vigilance), Government of Andhra Pradesh (para 19 above refers) creates serious doubts about the credibility of the whole process. No authentic list of Hyderabad Special Screening Committee-recommended cases complied on the basis of valid Hyderabad Special Screening Committee recommendation slips was ever prepared/ is available (as per available records on date) and one appropriate course of action in this problem was to analyse the HSSC-recommendation slips in each case.

35. It is averred that the recommendation slip (Exhibit R3) in the case of the petitioner is blank and cannot be treated as a HSSC-recommended cases under the relaxed eligibility and evidentiary criteria apropos HSSC-recommended cases. All claims not screened/recommended by HSSC are treated as normal claims of underground sufferings and processed accordingly. The claim of the petitioner has also to be treated as a normal case of underground suffering and decided under the normal eligibility and evidentiary criteria prescribed under the Scheme. Since no evidence, primary or secondary, has been produced, the claim of the petitioner deserves to be rejected. While denying the averments made in paragraphs 8 to 10, it is stated that the claim of the petitioner had been processed as HSSC-recommended.

Only evidentiary requirement in such cases is a valid recommendation slip of the HSSC. In the absence of a valid recommendation slip of the HSSC, it cannot be presumed that this case was duly recommended by the HSSC. There is no other document on record to fully and duly establish that this case was recommended by the HSSC. Therefore, his case cannot be taken as a HSSC-recommended case. Therefore, it is submitted that the sanction in his case was wrongly issued on mistaken grounds and deserves to be cancelled.

36. The salient features of SSS Pension Scheme 1980 had been relied upon by the counsel for the petitioner and the office memorandum dated 15th December 2003 also had been relied upon. The learned counsel would submit that though all the essentials and also the conditions necessary had been specified and the rejection had been made in a routine way incorporating unnecessary details without proper application of mind.

37. In Panjala Rajaiah Vs. Government of India, represented by Deputy Secretary, Ministry of Home Affairs, Freedom Fighters Division, New Delhi [1] a learned Judge of this Court observed in paragraphs 8 to 12 as under:

> "Under Paragraph 6, a person who considered himself eligible for FFP has to apply in duplicate in the prescribed application form. One copy should be sent to the Chief Secretary to the State Government/Union Territory Administration and the second copy should be sent to the Deputy Secretary, Ministry of Home Affairs, New Delhi. Such application be accompanied by necessary evidence to prove the claim as enumerated in paragraph9. The note below paragraph 9 is to the effect that the certificate issued by veteran freedom fighters in respect of underground suffering, internment/externment is also a valid background for proof of claim. Be that as it is,

under paragraph 10, the claim of the applicant shall have to be scrutinized by the State Government/U.T. Administration in consultation with the State Advisory Committee and it is only after receipt of verification and entitlement report, the claim of the applicant is scrutinized by the Government of India.

A reading of paragraphs 6 and 10 together makes it abundantly clear that Government of India is required to scrutinize the application for FFP only with reference to verification and entitlement report provided that the applicant is found eligible for such grant. The report/recommendation of the State Government is given utmost importance in the scheme. The report, therefore, cannot be rejected by the Central Government on the ground that the claim is doubtful in spite of the report of the State Government. This Court is not able to agree with the submission of the leaned Central Government Standing Counsel that the recommendation of the State Government is not binding on the Central Government. A certified copy of the unreported judgment of the High Court of Patna in Kishori Singh V. Union of India (supra) is not placed before this Court. On plain reading of paragraph 10, this Court is convinced that the report of the State Government does not only give right to the applicant for being considered for grant of FFP but also in certain cases final and binding.

In the present case, the petitioner along with the application has submitted the certificate issued by Sri V.Raajeshwar Rao, S/o Mohan Rao, who was in charge of Chanda camp. The certificate reads as under:

I, the undersigned V.Rajeswar Rao, son of Mohan Rao and resident of (full address) Hanmakonda was in-charge of the Camp situated at Chanda, District Chanda which planned and organized armed freedom struggle and sabotage activities against Nizam's feudal Rule during the period from 1947 to 1948.

I hereby certify that from my personal knowledge/that Shri Panjala Rajaiah, S/o Lachaiah resident of Chelpur, T.q. Huzurabad, District, Karimnagar, A.P is a bona fide activist of my camp. He was assigned by me following activities which he successfully carried out. (give details as per instructions)
The freedom fighter has carried out the activity ;as detailed by him in LR file was assigned by me.
The above certificate contains two paragraphs. The first paragraph only shows that the person giving certificate was resident of Hanmakonda and he was in-charge of Chanda camp. The second paragraph is to the effect that the petitioner was a *bona fide* activist of the camp i.e., Chanda camp. This certificate was very much enclosed to the application made by the petitioner and , therefore, on a reading of the report of the State Government along with the certificate, it cannot be said that the claim is doubtful. In the considered opinion of this Court, though at one point of time when the claim of the petitioner for FFP was rejected on 1.8.2003 the Government of India relied entirely on the State Government report, there is no reason why the respondent should not rely on the report of the State Government dated 21.10.2003 and sanction pension to the petitioner.
In a matter of this nature, ordinarily this Court would not issue Mandamus directing the competent authority to do a thing contrary to Law. Generally, in such matters, the matter is remanded to the competent authority. However, having regard to the fact that the petitioner is an octogenarian and the certificate enclosed by the petitioner show that he was in Chanda Camp, this Court is of considered opinion that he should be granted pension."

38. In the light of the respective stands taken by both the parties, this Court is of the considered opinion that it is a fit case where the matter to be reconsidered and let the

competent authority re-consider the whole issue in the light of the decision specified supra, and take a decision at the earliest point of time preferably within a period of four weeks from the date of receipt of a copy of this order.

39. Accordingly, the Writ Petition No. 8880 of 2006 is hereby closed and the Writ Petition No. 22087 of 2007 is disposed of. No order as to costs.

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P.S.NARAYANA, J

Date: -- --2007
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[1] 2006(3) ALT 774